

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Rural Health Care Universal Service Support ) WC Docket No. 02-60
Mechanism )
Schools and Libraries Universal Service Support ) CC Docket No. 02-6
Mechanism )

ORDER

Adopted: September 3, 2020

Released: September 3, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. The coronavirus (COVID-19) pandemic has caused unprecedented disruptions across the country, including to rural health care providers and schools and libraries that receive support for communications needs through the Commission’s Rural Health Care (RHC) and E-Rate programs.1 On March 18, 2020, the Wireline Competition Bureau (Bureau) temporarily waived the Commission’s gift rules applicable to the RHC and E-Rate programs to assist rural health care providers and schools and libraries affected by the pandemic.2 We subsequently waived on a temporary basis an RHC program administrative deadline to allow participants of that program to concentrate their attention on responding to COVID-19.3 These waivers are set to expire on September 30, 2020. Due to the ongoing disruptions caused by COVID-19 to program participants and the continued need for robust connectivity,4 we find good cause to extend our waivers of the RHC and E-Rate program gift rules through December 31, 2020.5 In addition, we waive the RHC deadline for responding to information requests from the Universal Service Administrative Company (USAC) through December 31, 2020. Finally, we direct USAC to provide a 30-day extension to E-Rate program participants impacted by the pandemic that request an

1 E-Rate is more formally known as the schools and libraries universal service support mechanism.

2 See Rural Health Care Universal Service Support Mechanism; Schools and Libraries Universal Service Support Mechanism, WC Docket No. 02-60, CC Docket No. 02-6, Order, 35 FCC Rcd 2741 (WCB 2020) (waiving sections 54.622(h) and 54.503(d) of the Commission’s rules) (RHC and E-Rate COVID-19 Gift Rules Waiver Order).

3 See Rural Health Care Support Mechanism, WC Docket No. 02-60, 35 FCC Rcd 2922 (WCB 2020) (waiving RHC program deadlines applicable to responding to USAC information requests and requesting review or waivers of USAC decisions) (RHC COVID-19 Waiver Order).

4 See Letter from John Windhausen, Executive Director, Schools, Health & Libraries Broadband (SHLB) Coalition, Keith Krueger, CEO, Consortium for School Networking (CoSN), & Christine Fox, Deputy Executive Director, State Educational Technology Directors Association (SETDA), to Kris Monteith, Chief, Wireline Competition Bureau, WC Docket No. 02-6, CC Docket No. 02-60, WC Docket No. 13-184 at 1 (filed Aug. 4, 2020) (SHLB, CoSN, & SETDA Letter) (requesting an extension of the RHC and E-Rate gift rules waiver as the pandemic persists); see also Letter from Debra M. Kriete, Chairperson, State E-rate Coordinators’ Alliance (SECA), to Ajit Pai, Chairman, FCC, WC Docket No. 13-184 at 1 (filed Aug. 3, 2020) (SECA Letter) (requesting an extension of the E-Rate gift rule waiver to address continuing challenges faced by participants as a result of the pandemic).

5 47 CFR §§ 54.622(h), 54.503(d).

extension to respond to certain USAC information requests, including those related to Program Integrity Assurance (PIA) requests, issued through December 31, 2020. With our action, we continue to ensure health care providers, schools, and libraries can benefit from communications technologies during this unprecedented time, while easing administrative burdens on program participants so that they might focus on responding to the ongoing pandemic.

## II. BACKGROUND

2. The Commission's RHC program consists of two component programs: (1) the Telecommunications (Telecom) program; and (2) the Healthcare Connect Fund program.<sup>6</sup> Unless a competitive bidding exemption applies, applicants in the Telecom program must submit an FCC Form 465 to request bids for services and applicants in the Healthcare Connect Fund program must submit an FCC Form 461 to request bids for services and/or equipment, which are then posted on the USAC website.<sup>7</sup> The RHC program's competitive bidding process must be fair and open and not have been compromised because of improper conduct by the applicant, service provider, or both parties.<sup>8</sup> Among other requirements, a fair and open competitive bidding process requires that all potential bidders and service providers have access to the same information and be treated in the same manner throughout the procurement process.<sup>9</sup> Eligible health care providers may apply for support for eligible services by filing either an FCC Form 466 (Telecom program) or an FCC Form 462 (Healthcare Connect Fund program) with USAC, which uses the forms to determine the appropriate support payment, if any, from the Universal Service Fund (USF).<sup>10</sup> To ensure efficient and effective administration, the RHC program imposes deadlines for responding to USAC inquiries regarding applications and seeking appeals from USAC decisions.<sup>11</sup>

3. Under the E-Rate program, eligible schools, libraries, and consortia (comprised of eligible schools and libraries) may request universal service discounts for eligible services, including connections necessary to support broadband connectivity to eligible schools and libraries.<sup>12</sup> To obtain support, an applicant must comply with the Commission's competitive bidding rules, enter into an agreement with a service provider, and file an FCC Form 471 with USAC to request E-Rate discounts for the purchase of the services.<sup>13</sup> As with the RHC program's competitive bidding process, the Commission has stated that the competitive bidding process in the E-Rate program must be fair and open and not have been compromised because of improper conduct by the applicant, service provider, or both parties. All potential program bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process.<sup>14</sup>

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<sup>6</sup> *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Order, 34 FCC Rcd 7335, 7337, para. 4 (2019) (*Promoting Telehealth Report and Order*).

<sup>7</sup> *Id.* at 7411, para. 163 (harmonizing both programs' competitive bidding exemptions and explaining that, in the absence of an exemption, applicants file an FCC Form 461 or Form 465 for the appropriate program).

<sup>8</sup> *See* 47 CFR § 54.622(b)(1) (listing the actions necessary to satisfy the "fair and open" competitive bidding requirement).

<sup>9</sup> *Id.*

<sup>10</sup> *See* 47 CFR § 54.623.

<sup>11</sup> *See, e.g., Promoting Telehealth Report and Order*, 34 FCC Rcd at 7423, para. 189 (explaining that "filing deadlines are necessary for efficient administration of the RHC Program"); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 30 FCC Rcd 1063, 1065, para. 6 (WCB 2015) (reminding applicants that adherence to the filing deadlines and program rules are necessary for the efficient administration of the RHC Program).

<sup>12</sup> 47 CFR §§ 54.501, 54.502.

<sup>13</sup> *See* 47 CFR § 54.503.

<sup>14</sup> *See id.*

4. Consistent with these requirements, RHC and E-Rate program participants must adhere to the Commission's gift rules, which prohibit applicants from soliciting or accepting any gift or other thing of value from a service provider participating in or seeking to participate in either program.<sup>15</sup> Similarly, service providers are prohibited from offering or providing any gift or other thing of value to those personnel of eligible entities involved in either program.<sup>16</sup> In separately adopting gift rules for the RHC and E-Rate programs, the Commission explained that "the restriction on gifts is always applicable and is not in effect or triggered only during the time period when competitive bidding is taking place."<sup>17</sup> Accordingly, under RHC and E-Rate rules, applicants are not permitted to solicit or accept a gift or thing of value over \$20 from a service provider, and service providers are not permitted to offer applicants a gift or thing of value over \$20.<sup>18</sup>

5. *Prior Orders Responding to COVID-19.* The COVID-19 pandemic has affected communities across the United States and the world.<sup>19</sup> To help ensure that health care providers, schools, and libraries have the resources they need to respond to the pandemic and alleviate administrative burdens on program participants, the Bureau issued three orders earlier this year waiving certain RHC and E-Rate program rules and deadlines. The *RHC and E-Rate COVID-19 Gift Rules Waiver Order* waived each program's gift rule, thereby allowing service providers to offer, and for RHC and E-Rate program participants to solicit and accept, improved broadband connections or equipment for telehealth or remote learning during the COVID-19 outbreak without running afoul of Commission rules.<sup>20</sup> Building on this

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<sup>15</sup> 47 CFR § 54.622(h) ("[A]n eligible health care provider or consortium that includes eligible health care providers, may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the Rural Health Care Program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided herein."); 47 CFR § 54.503(d) ("[A]n eligible school, library, or consortium that includes an eligible school or library may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the schools and libraries universal service program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided herein."); *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7412-14, paras. 166-69; *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Order, 25 FCC Rcd 18762, 18801, para. 88 (2010) (*Schools and Libraries Sixth Report and Order*). Consistent with the gift rules applicable to federal agencies, certain *de minimis* gifts, including modest refreshments and items that are worth \$20 or less, are allowable under the rules. *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7413, para. 167; *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18801, para. 88. When it adopted gift rules for the RHC program, the Commission specifically adopted the already-existing gift rules in the E-Rate program. *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7412-13, para. 166-67.

<sup>16</sup> 47 CFR §§ 54.622(h), 54.503(d); *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7413, para. 168; *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18801, para. 88.

<sup>17</sup> *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7413, para. 168; see also *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18801, para. 88 (noting that "the restriction on gifts is always applicable, and is not in effect or triggered only during the time period when the competitive bidding process is taking place," because "gift activities that undermine the competitive bidding process may occur outside the bidding period.").

<sup>18</sup> *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7413, para. 168; *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18801, para. 88. In addition to *de minimis* gifts, the Commission's rules also allow for charitable donations, including literacy programs, scholarships, and capital improvements, as long as such contributions are not directly or indirectly related to procurement activities or decisions. See *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7413, para. 167; *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18802, para. 90.

<sup>19</sup> Centers for Disease Control and Prevention, *What you should know about COVID-19 to protect yourself and others*, <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf> (last visited Sept. 3, 2020).

<sup>20</sup> See *RHC and E-Rate COVID-19 Gift Rules Waiver Order*, 35 FCC Rcd at 2741-42.

relief, the *RHC COVID-19 Waiver Order* extended the RHC program application filing window, eased competitive bidding requirements for health care providers with expiring evergreen contracts, and extended several RHC program procedural deadlines.<sup>21</sup> These steps were intended to assist health care providers address COVID-19 demands without the diversion of near-term program administrative requirements. Finally, the *E-Rate COVID-19 Waiver Order* extended several key E-Rate deadlines, including the time frame for responding to USAC information requests, to alleviate administrative burdens on schools and libraries experiencing closures and allow them to focus on transitioning to remote learning during the pandemic.<sup>22</sup>

6. *Continuing Impact of COVID-19.* COVID-19 has placed extreme demands on rural health care providers attempting to serve a growing caseload of infected patients despite facing equipment and medical supply shortages commonplace in remote parts of the country.<sup>23</sup> The pandemic also has compelled schools and libraries across the country to close their doors in an effort to stop the spread of the disease.<sup>24</sup> The disruptive force of COVID-19 has persisted since we first offered temporary relief to RHC and E-Rate program participants earlier this year. Underequipped rural health care providers continue to face critical challenges serving patients spread out over vast remote areas.<sup>25</sup> In addition, an increasing number of educational institutions and libraries have announced that they will remain closed to begin the upcoming school year, thereby forcing instruction to be offered on a remote, at-home basis only.<sup>26</sup> Thus, the critical need for relief evident earlier this year continues.

### III. DISCUSSION

7. To assist RHC and E-Rate program participants responding to COVID-19, we extend our waivers of the RHC and E-Rate program gift rules through December 31, 2020. We further extend the 14-day response deadline for RHC program-related USAC information requests through December 31, 2020. Finally, we direct USAC to give an additional 30 days to E-Rate program participants that request extensions to respond to: information requests issued through December 31, 2020 and related to pending USAC appeals; invoices; FCC Form 500 (Funding Commitment Adjustment Request Form) requests; audits, including Beneficiary and Contributor Audit Program (BCAP) and Payment Quality Assurance (PQA) audits; and PIA requests. Our action extending the gift rule waiver will permit service providers to continue to offer, and eligible RHC and E-Rate entities to continue to solicit and accept, improved capacity, Wi-Fi hotspots, networking gear, or other things of value to assist health care providers, schools and libraries, as well as doctors and patients, teachers, students, school administrators, and librarians and patrons during the coronavirus outbreak. As before, these gifts may include but are not limited to free

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<sup>21</sup> See *RHC COVID-19 Waiver Order*, 35 FCC Rcd at 2922.

<sup>22</sup> See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 35 FCC Rcd 2978 (WCB 2020) (*E-Rate COVID-19 Waiver Order*).

<sup>23</sup> See *RHC and E-Rate COVID-19 Gift Rules Waiver Order*, 35 FCC Rcd at 2743-44, para. 5.

<sup>24</sup> *Id.* at 2744, para. 6.

<sup>25</sup> See, e.g., Centers for Disease Control and Prevention, *Rural Communities* (last updated Aug. 3, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/other-at-risk-populations/rural-communities.html>; Bert Pfankuch, *Pandemic threatens fragile rural health-care system in South Dakota*, Mitchell Republic (June 26, 2020), <https://www.mitchellrepublic.com/newsmd/coronavirus/6551878-Pandemic-threatens-fragile-rural-health-care-system-in-South-Dakota>.

<sup>26</sup> See, e.g., Joe Barrett & Lee Hawkins, *Chicago Schools Reopening Online Only as Coronavirus Cases Rise*, The Wall Street Journal (Aug. 5, 2020), <https://www.wsj.com/articles/new-york-schools-among-few-top-10-districts-reopening-schools-for-in-person-learning-11596635317>; *School Districts' Reopening Plans: A Snapshot*, Education Week (last updated Sept. 3, 2020), <https://www.edweek.org/ew/section/multimedia/school-districts-reopening-plans-a-snapshot.html?cmp=eml-enl-eu-news2&M=59643666&U=&UID=a1fa561663d1afd2dbf4210d1f3c76f6> (“As of September 2, 73% of the 100 largest school districts[] have chosen remote learning only as their back-to-school instructional model, affecting over 8 million students.”).

upgrades to connections, connected devices, equipment, and other services for RHC and E-Rate program participants who provide care via telemedicine and free broadband connections, devices, or other services that support remote learning for students and teachers who will be taking classes at and providing instruction from home as a result of COVID-19. In addition, providing targeted relief of program deadlines will enable health care providers, schools, and libraries to address pressing needs arising from the pandemic while ensuring the smooth administration of the RHC and E-Rate programs.

8. Generally, the Commission's rules may be waived for good cause shown.<sup>27</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>28</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>29</sup> We find that the extensive disruption to health care providers, schools, and libraries throughout the country and the heightened need for telemedicine and remote learning caused by COVID-19 present compelling and unique circumstances that merit an extended waiver of certain rules. We conclude that any potential costs to the RHC or E-Rate programs that could result from this Order will be outweighed by the benefits of our action.

#### A. RHC Program

9. We extend through December 31, 2020 waivers to the RHC program gift rule to enable health care providers to receive free upgraded services from service providers and permit stakeholders an additional 28 days to respond to USAC information requests.

10. *RHC Program Gift Rule.* Although our RHC program gift rule waiver was originally set to expire on September 30, 2020, we indicated in March that we would monitor the situation and assess the need for extended relief after that date.<sup>30</sup> Five months later, health care providers in rural areas remain severely burdened by the demands of COVID-19.<sup>31</sup> Moreover, we have seen that enhanced telehealth programs can help to lessen these demands. For example, researchers report that a rural hospital system in northern Michigan implemented several telehealth measures after a statewide stay-at-home order was issued.<sup>32</sup> More than 500 health care professionals and 75 ambulatory practices offered video and telephone services resulting in more than 14,000 virtual visits in a six-week period.<sup>33</sup> This Michigan system also uses telehealth to screen and triage patients before arriving.<sup>34</sup> Successful telehealth efforts such as Michigan's lead us to conclude that extending the waivers of the RHC program gift rule for an additional three months (through December 31, 2020) to allow service providers to offer and provide free

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<sup>27</sup> 47 CFR § 1.3.

<sup>28</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>29</sup> *Id.*

<sup>30</sup> See *RHC and E-Rate COVID-19 Gift Rules Waiver Order*, 35 FCC Rcd at 2747, para. 12.

<sup>31</sup> See, e.g., Centers for Disease Control and Prevention, *Using Telehealth Services*, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/telehealth.html> (last updated June 10, 2020); Maria Clark, *In the rural South, telehealth is giving patients a needed lifeline during the pandemic*, *The Tennessean* (Aug. 5, 2020), <https://www.tennessean.com/story/news/american-south/2020/08/05/telehealth-rural-areas-get-healthcare-lifeline-pandemic-continues/5502708002/>; Paul Owers, *Telehealth is an important tool for rural hospitals in treating COVID-19, research shows*, *Science Daily* (July 1, 2020), <https://www.sciencedaily.com/releases/2020/07/200701100021.htm>; see also SHLB, CoSN, & SETDA Letter, at 2 (citing report of demand for telemedicine increasing by more than 11,718%).

<sup>32</sup> American Academy of Family Physicians, *Study Examines Telehealth, Rural Disparities in Pandemic* (July 30, 2020), <https://www.aafp.org/news/practice-professional-issues/20200730ruraltelehealth.html>.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

upgrades, connected devices, networking equipment, services, or other things of value to health care providers is an appropriate measure to take to address the extraordinary circumstances caused by COVID-19. The gift rule waiver that we extend today is limited to health care providers involved in the screening and treatment of patients for COVID-19 and for providing service to other patients in an effort to both help mitigate the spread of COVID-19 and devote limited on-site medical resources towards treatment of COVID-19.

11. When waiving the RHC program gift rule in March, we also waived two other rules that we determined could serve as regulatory obstacles preventing service providers from voluntarily offering to assist health care providers respond to the pandemic – specifically, section 54.611(b),<sup>35</sup> which requires health care providers to pay the unsupported portion of service costs in the Healthcare Connect Fund Program, and section 54.603(b),<sup>36</sup> which requires health care providers in the Telecom Program to pay the urban rate.<sup>37</sup> To help health care professionals more effectively respond to the pandemic, we extend the waivers of sections 54.611(b) and 54.603(b) through December 31, 2020. We also waive any other requirement, to the extent necessary, in these special circumstances to effectuate the RHC program relief granted, including restrictions on certification requirements.<sup>38</sup> Because these waivers expire before the beginning of funding year 2021, health care providers seeking upgraded connections for funding year 2021 will be required to obtain these upgrades consistent with RHC program rules.

12. *Extending the Response Time for USAC Information Requests.* RHC program applicants are generally required to respond to information requests from USAC within 14 days or their applications will be denied.<sup>39</sup> Recognizing that health care providers with administrative resources diverted due to the pandemic could have difficulties timely responding to USAC, the *RHC COVID-19 Waiver Order* waived that 14-day deadline and extended it by an additional 28 days for information requests issued on or before September 30, 2020.<sup>40</sup> We conclude that the need for this form of relief will outlast the initial waiver period, and therefore extend the waiver through December 31, 2020. Health care providers and services providers will continue to have an extra 28 days (42 days in total) to respond to information requests issued by USAC on or before December 31, 2020.<sup>41</sup> As before, the waiver applies to information requests related to funding requests, appeals and waivers, invoices, audits, and other documentation submitted by RHC program applicants.<sup>42</sup>

## **B. E-Rate Program**

13. *E-Rate Program Gift Rule.* In March, we temporarily waived the E-Rate program gift rule through September 30, 2020 to provide relief to schools and libraries affected by COVID-19 and

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<sup>35</sup> 47 CFR § 54.611(b).

<sup>36</sup> 47 CFR § 54.603(b).

<sup>37</sup> *RHC and E-Rate COVID-19 Gift Rules Waiver Order*, 35 FCC Rcd at 2746, para. 11.

<sup>38</sup> See 47 CFR § 54.623(a)(1)(vi) (requiring the applicant to certify that the health care provider or consortium and/or its consultant has not solicited or accepted any gift or any other thing of value from a service provider participating in the Rural Health Care program); 47 CFR § 54.627(c)(3)(ii)(H), (d)(1)(ii)(F) (requiring the service provider to certify that “it was not offered or provided a gift or any other thing of value to the applicant (or the applicant’s personnel, including its consultant) for which it will provide services”).

<sup>39</sup> See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 30 FCC Rcd 230, 231, para. 1 (WCB 2015).

<sup>40</sup> *RHC COVID-19 Waiver Order*, 35 FCC Rcd at 2925-26, para. 9.

<sup>41</sup> To ensure that RHC program participants have sufficient resources for the treatment of COVID-19 patients, health care providers and service providers participating in the RHC program will not be required to request an extension of the deadline to respond to information requests.

<sup>42</sup> See *RHC COVID-19 Waiver Order*, 35 FCC Rcd at 2925, para. 9.

make it easier for service providers to support remote learning efforts.<sup>43</sup> The resulting partnerships between schools, libraries, and service providers have proven to be beneficial in providing flexibility to address evolving connectivity needs caused by the pandemic.<sup>44</sup> For example, when a rural school district in southern Illinois needed to implement a COVID-19 responsive plan to address the needs of 18% of students without reliable broadband Internet access, the waiver of the E-Rate gift rule enabled the district to successfully solicit an upgrade to their connection from their service provider so that students could complete their homework from the school's parking lot.<sup>45</sup> As many schools and libraries are now either fully or partially closing their buildings for the upcoming school term due to the pandemic, and relying on remote learning to provide education for students, we find it is in the public interest to extend our waiver of the E-Rate program gift rule through December 31, 2020. In so doing, we continue to enable service providers to offer, and E-Rate program participants to solicit or accept, broadband connections, Wi-Fi hotspots and other devices, networking gear, system upgrades, or other things of value that could help students, teachers, and patrons affected by these closures during this unprecedented time. In particular, we find an extension of our waiver appropriate in this limited and unique circumstance to ensure students with limited or no Internet connection are connected at home and prevent them from falling behind their peers, furthering the effects of the digital divide.<sup>46</sup> We emphasize that this waiver is still limited to offerings made by service providers and solicited or accepted by E-Rate eligible entities on behalf of students, teachers, or patrons while schools and libraries prepare for extended remote learning and remain fully or partially closed as a direct result of COVID-19.<sup>47</sup>

14. Additionally, we recognize that the transition to remote learning has resulted in increased demands for on-campus Internet connectivity during the pandemic in a way that was not anticipated.<sup>48</sup> We clarify that, under this waiver, service providers may offer, and schools and libraries may solicit or accept, gifts of additional bandwidth through December 31, 2020 to meet the increased on-campus connectivity needs of schools and libraries in response to the pandemic without running afoul of the E-Rate program rules. We also waive any other requirement, to the extent that is necessary, in these special circumstances to effectuate the relief granted.<sup>49</sup> At the same time, we remind E-Rate applicants of their obligation to comply with state and local procurement laws,<sup>50</sup> and we note that applicants are still subject

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<sup>43</sup> See *RHC and E-Rate COVID-19 Gift Rules Waiver Order*, 35 FCC Rcd at 2741-42, para. 1.

<sup>44</sup> See, e.g., Jana Bounds, *An unexpected \$15,000 gift*, Lone Peak Lookout (Aug. 6, 2020), <http://www.lonepeaklookout.com/news/unexpected-15000-gift> (explaining how the E-Rate gift rule waiver enabled 3 Rivers Communications to provide \$15,000 grants to thirteen libraries in its service areas); see also SHLB, CoSN, & SETDA Letter, at 2 (stating that the waiver of the gift rule has benefitted schools, libraries and healthcare providers); SECA Letter, at 3 (requesting an extension of the gift rule waiver to enable continued arrangements between schools and service providers to meet the educational needs of students during the pandemic).

<sup>45</sup> Kevin Hogan, *Time to get real with equity*, eSchool News (Aug. 4, 2020), <https://www.eschoolnews.com/2020/08/04/time-to-get-real-with-equity/>.

<sup>46</sup> See SHLB, CoSN, & SETDA Letter, at 1-2 (noting several schools' plans to shift to remote learning for the fall).

<sup>47</sup> *RHC and E-Rate COVID-19 Gift Rules Waiver Order*, 35 FCC Rcd at 2747, para. 14.

<sup>48</sup> See SECA Letter, at 1 (stating that remote learning requires considerably more Internet bandwidth on campus, in comparison to in-person instruction).

<sup>49</sup> Nevertheless, we remind applicants that they are still required to pay the non-discount portion of the cost of eligible E-Rate services pursuant to section 54.523 of the Commission's rules, and we clarify that this waiver does not permit service providers to cover an applicant's non-discount share. 47 CFR § 54.523. *But see Modernizing the E-Rate Program for Schools and Libraries; Connect America Fund*, WC Docket Nos. 13-184, 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15561, para. 56, n.126 (2014) (*2014 Second E-Rate Order*) (noting that applicants may seek support for their non-discounted share from state, county, local, or other governmental entities, as well as from non-profit associations).

<sup>50</sup> See 54 CFR § 54.503(b).

to the program rules requiring a fair and open competitive bidding process as they begin competitive bidding for funding year 2021.<sup>51</sup>

15. *Extending the Timeframe for Responding to USAC Information Requests.* In light of the number of schools and libraries facing disruptions due to COVID-19, in April, we directed USAC to provide an automatic, 30-day extension of the deadline to respond to certain USAC information requests issued between March 11, 2020 and the start of the summer deferral period, May 22, 2020.<sup>52</sup> Given that the summer deferral period will end on September 11, 2020 and the difficulties caused by COVID-19 still persist,<sup>53</sup> we direct USAC to provide a 30-day extension to program participants that file an extension request with an explanation of the entities' inability to respond (e.g., dates of closure, difficulty securing the appropriate resources)<sup>54</sup> to information requests issued between September 11, 2020 and December 31, 2020 and related to the following: pending USAC appeals; invoices; pending FCC Form 500 requests, including service substitutions, Service Provider Identification Number (SPIN) changes, or funding request cancellation requests; audits, including BCAP and PQA audits; and PIA requests. To ensure timely review and issuance of decisions, including funding decisions, during this time, we continue to encourage all program participants, to the extent practicable, to continue to work on and submit responses to all information requests as they are able.

### C. Preventing Waste, Fraud, and Abuse.

16. We are committed to guarding against waste, fraud, and abuse in the USF programs. Accordingly, we require all eligible RHC and E-Rate program participants to retain records documenting the services, equipment, or other things of value that they receive pursuant to the waivers described above and consistent with the document retention periods applicable to each program.<sup>55</sup> Although we grant the limited waivers described herein, program participants and service providers remain otherwise subject to audits and investigations to determine compliance with USF program rules and requirements. We will require USAC to recover funds through its normal process that we discover were not used properly. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the USF programs and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred, and that recovery is warranted. Additionally, in the event we discover any improper activity resulting from our action today, we will subject the offending party to all available penalties at our disposal, and will direct USAC to recover funds, assess retroactive fees and/or interest, or both. We remain committed to ensuring the integrity of the RHC and E-Rate programs and will continue to aggressively pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with law enforcement agencies.

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<sup>51</sup> See 47 CFR § 54.503.

<sup>52</sup> *E-Rate COVID-19 Waiver Order*, 35 FCC Rcd at 2981-82, para. 10 (directing USAC to provide applicants with an automatic, 30-day extension for information requests related to pending USAC appeals, invoices, FCC Form 500 requests (including service substitutions, Service Provider Identification Number (SPIN) changes, or funding request cancellation requests); audits, including BCAP and PQA audits; and PIA requests).

<sup>53</sup> See USAC, *Schools and Libraries, Applicant Process, Step 4: Application Review, Missing Information*, <https://www.usac.org/e-rate/applicant-process/application-review/missing-information/> (last visited Sept. 3, 2020) (noting that the summer deferral period extends from the Friday before Memorial Day (i.e., May 22, 2020) through the Friday following Labor Day (i.e., September 11, 2020)).

<sup>54</sup> We encourage participants to provide any supporting documentation that demonstrates the participant's need for the requested extension.

<sup>55</sup> See 47 CFR §§ 54.631(b)-(c), 54.516(a)(1).

**IV. ORDERING CLAUSES**

17. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that sections 47 CFR 54.503(d)(1), 54.603(b), 54.611(b), 54.622(h)(1), 54.623(a)(1)(vi), 54.627(c)(3)(ii)(H), and 54.627(d)(1)(ii)(F) of the Commission's rules ARE WAIVED to the extent provided herein.

18. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.1.02(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau